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2 **UNITED STATES DISTRICT COURT**

3 **DISTRICT OF OREGON**

4 **PORTLAND DIVISION**

5 INTERNATIONAL ASSOCIATION OF SHEET)
6 METAL WORKERS LOCAL 16; TRUSTEES OF)
THE OREGON SHEET METAL WORKERS MASTER)
7 RETIREMENT TRUST; THE SHEET METAL)
WORKERS #16 HEALTH TRUST; AND THE)
8 DIRECTORS OF THE COLUMBIA CHAPTER)
OF THE SMACNA INDUSTRY FUND;)

NO. 10-CV-01429-HU

9 Plaintiffs,)

10 vs.)

11 COQUILLE SHEET METAL, INC.,)

12 Defendant.)

**FINDINGS AND
RECOMMENDATION ON
MOTION FOR DEFAULT JUDGMENT**

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14
15 Heidi K. Brown
Linda J. Larkin
16 Bennett, Hartman, Morris & Kaplan, LLP
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17 Portland, OR 97204-3149

18 Attorneys for Plaintiffs

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20 HUBEL, Magistrate Judge:

21 The plaintiffs in this ERISA action return for a renewed
22 attempt to obtain entry of a default judgment against the
23 defendant. On January 25, 2011, I entered an order of default
24 against the defendant for failure to plead or respond to the
25 Complaint. Dkt. #8. The plaintiffs then filed a motion for
26 default judgment. I entered Findings and Recommendation on the
27 plaintiffs' motion for judgment, recommending the motion be denied
28 because the plaintiffs had failed to meet their burden to

1 substantiate the damages requested. Dkt. #12, Findings &
2 Recommendation entered April 8, 2011. The plaintiffs concurred
3 with my findings and recommendation, acknowledging that errors and
4 omissions were made in their previous motion. Dkt. #14. On May 5,
5 2011, District Judge Michael W. Mosman adopted my Findings and
6 Recommendation as his own, and denied the plaintiffs' previous
7 motion for entry of judgment. Dkt. #15.

8 In the plaintiffs' amended motion for judgment, Dkt. #21, and
9 the supporting Amended Affidavit of attorney Linda J. Larkin,
10 Dkt. #22, the plaintiffs have submitted additional evidence in
11 support of their request for entry of judgment in their favor.

12 The Oregon Sheet Metal Workers Master Retirement Trust (the
13 "Retirement Trust") and the Sheet Metal Workers #16 Health Trust
14 (the "Health Trust") (collectively, the "Trusts"), are employee
15 benefit plans within the meaning of 29 U.S.C. § 1001 *et seq.* The
16 International Association of Sheet Metal Workers Local 16 ("Local
17 16") is described as "a labor organization . . . representing the
18 employees of the Defendant." Dkt. #22, ¶ 3.

19 At all times relevant to this action, the defendant Coquille
20 Sheet Metal, Inc. ("Coquille") was signatory to a collective
21 bargaining agreement ("CBA") with Local 16. See *id.*, Ex. 1,
22 Standard Form of Union Agreement dated July 1, 2010 - June 30,
23 2013. Among other things, the CBA required Coquille to pay
24 contributions into the Trusts on behalf of its employees. *Id.*
25 Coquille was required to submit reporting and make payments by the
26 15th day of each month following a month in which hours were
27 worked. Payments were considered delinquent after the 20th of the
28 month. *Id.*, Addenda III, ECF p. 54 of 93.

1 The Trust Agreements for each of the Trusts were amended as of
2 January 1, 2002, "to increase the minimum and maximum amount of
3 liquidated damages applicable on and after January 1, 2002." Dkt.
4 #22, Exs. 2 & 3; see Ex. 1, Addenda II and III, specifically
5 incorporating "any Amendments" to the Trusts. Pursuant to the
6 Amendments, upon Coquille's default, Coquille became liable, in
7 addition to the amount of any unpaid contribution, for interest at
8 18% per annum from the date of the delinquency to the date of
9 payment; liquidated damages equal to 20% of the unpaid
10 contribution, subject to a \$50 minimum and a \$1,500 maximum (\$25
11 and \$750, respectively, prior to the Amendments); "reasonable
12 attorney fees and costs"; and any other costs, expenses, or damages
13 the Trust might incur as a result of the delinquency. *Id.*

14 In the plaintiffs' Complaint in this case, they allege
15 Coquille failed to pay contributions to the Trusts as required by
16 the CBA for the months of August and September 2010. Coquille
17 submitted reports for those two months showing the employee hours
18 worked and contribution amounts Coquille was required to pay. See
19 Dkt. #22, Ex. 4. For August 2010, Coquille owed \$1,823.44 to the
20 Retirement Trust, and \$14.59 to the Health Trust (shown as "Drug
21 Testing" on the report), for total contributions owing in the
22 amount of \$1,838.03. See Dkt. #22, ¶ 11 & Ex. 4. For September
23 2010, Coquille owed \$1,798.44 to the Retirement Trust, and \$14.39
24 to the Health Trust, for total contributions owing in the amount of
25 \$1,812.83. *Id.* Thus, Coquille owes contributions for August and
26 September 2010 in the total amount of \$3,650.86. *Id.* Each of the
27 contributions is subject to the \$50 minimum and \$1,500 maximum
28

described above. Calculation of the applicable liquidated damages amounts is as follows:

| | |
|--|------------|
| Aug. 2010 Retirement Trust (due by 09/15/10): | |
| Contribution owed | \$1,823.44 |
| 18% interest to 11/15/11 ¹ | 382.92 |
| 20% of contribution amount | 364.69 |
| (min./max. not applicable) | |
| Total due to 11/15/11 | \$2,571.05 |
| Aug. 2010 Health Trust (due by 09/15/10): | |
| Contribution owed | \$14.59 |
| 18% interest to 11/15/11 ² | 3.07 |
| 20% of contribution amount | (.00) |
| (min. amount applicable) | 50.00 |
| Total due to 11/15/11 | \$67.66 |
| Sept. 2010 Retirement Trust (due by 10/15/10): | |
| Contribution owed | \$1,798.44 |
| 18% interest to 11/15/11 ³ | 377.67 |
| 20% of contribution amount | 359.69 |
| (min./max. not applicable) | |
| Total due to 11/15/11 | \$2,535.80 |
| Sept. 2010 Health Trust (due by 10/15/10): | |
| Contribution owed | \$14.39 |
| 18% interest to 11/15/11 ⁴ | 3.02 |
| 20% of contribution amount | (.00) |
| (min. amount applicable) | 50.00 |
| Total due to 11/15/11 | \$67.41 |
| Total contributions and liquidated damages owing to 11/15/11 | \$5,241.92 |

The plaintiffs seek attorneys' fees and costs in connection with this case, in accordance with the terms of the CBA and the Addenda. The plaintiffs have incurred costs of \$410.00,

¹Interest continues to accrue at a rate of \$.90 per day from 11/16/11 to the date of judgment.

²Interest continues to accrue at a rate of \$.0007 per day from 11/16/11 to the date of judgment.

³Interest continues to accrue at a rate of \$.89 per day from 11/16/11 to the date of judgment.

⁴Interest continues to accrue at a rate of \$.007 per day from 11/16/11 to the date of judgment.

1 representing their filing fee and service of process. The court
2 finds these costs are reasonable and customary.

3 The plaintiffs state they have incurred attorney fees in the
4 total amount of \$2,683.00, including 2.1 hours for Legal Assistant
5 time at the rate of \$85.00 per hour; and 14.5 hours for attorney
6 time, broken down as 6.6 hours at the rate of \$170.00 per hour
7 (counsels' rate through December 31, 2010), and 7.9 hours at the
8 rate of \$175.00 per hour (counsels' rate beginning January 1,
9 2011). However, neither the plaintiffs nor the defendant should be
10 liable for the payment of fees for time expended by the plaintiffs'
11 attorneys and legal assistants in preparing the initial motion for
12 default judgment and supporting affidavit which the court
13 previously found to be deficient. In addition, certain of the
14 legal assistant fees appear to relate to matters other than
15 prosecution of the current litigation.⁵ The court therefore finds
16 the plaintiffs' fees in connection with this action should be
17 reduced to .6 hours of Legal Assistant time at \$85.00/hour, for a
18 total of \$51.00; and attorney time of 6.6 hours at \$170.00 per
19 hour, totaling \$1,122.00; and 5.2 hours at \$175.00 per hour,
20 totaling \$910.00; for a total attorneys' fee of \$2,083.00.

21 I therefore recommend judgment be entered for the plaintiffs
22 and against the defendant as follows:

23 Damages in the amount of \$5,241.92
24

25
26 ⁵See, e.g., the entries for 8/15/11 (.5 hours for "Review
27 files and pleadings for status of each USDC case, notes to file";
28 and .3 hours for "Telephone conference with Len Phillips re:
current contract and discuss with Attorney Larkin"); and 8/15/11
(.2 hours for another telephone conference and e-mail "re:
contract").

Costs in the amount of \$410.00

Attorneys' fees in the amount of \$2,083.00

Post-judgment interest as provided by law.

SCHEDULING ORDER

These Findings and Recommendations will be referred to a district judge. Objections, if any, are due by **December 4, 2011**. If no objections are filed, then the Findings and Recommendations will go under advisement on that date. If objections are filed, then the Findings and Recommendations will go under advisement on the date of filing.

IT IS SO ORDERED.

Dated this 15th day of November, 2011.

/s/ Dennis J. Hubel

Dennis James Hubel
Unites States Magistrate Judge